

REMARKS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-51 are now present in this application. Claims 1, 24, 37, 41 and 47 are independent and Claims 5, 6, 24, 34 and 38-40 have been amended by the present amendment.

First, it is respectfully noted an associate power of attorney/change of correspondence address was previously filed in this application on December 13, 2002. However, both Office Actions have been mailed to the old address (i.e., to the wrong address). Therefore, enclosed is a copy of the previously filed papers on December 13, 2002. The previously filed papers have also been re-filed under separate cover. Accordingly, it is respectfully requested the file be updated with the new address and power of attorney.

35 U.S.C. 103(a) Rejections

There are several rejections under 35 U.S.C. § 103(a) listed in the Office Action. Each of the rejections is respectfully traversed.

Claims 1, 24, 37, 41 and 47 are independent. For example, amended independent claim 1 is directed to a method of selecting a server to represent a virtual server hosted by a plurality of servers. The method includes providing a load balancer not associated with the virtual server and in which the load balancer includes a client-controlled load balancer that directly selects one of the plurality of servers representing the virtual server based on one or more parameters provided by the load balancer.

Thus, according to the present invention, the user or client is able to make an intelligent decision as to which virtual server would best serve the client.

In rejecting the independent claims, the Office Action relies on the primary reference by Skene et al. as teaching the claimed load balancer and cites the EDNS server 160 in Figure 1, and relies on the secondary reference by Brendel as teaching a client-controlled load balancer that directly selects a server based on one or more parameters. The Office Action also indicates that it would have been obvious to one of ordinary skill in the art ... to combine Brendel ... and Skene et al. ... to improve the overall performance of the Internet and/or WAN links.

However, combining Brendel with Skene et al. still only produces the client 150 in Skene et al. selecting a Server Array Controller (SAC), which then selects a particular server. In more detail and as discussed in the previously filed response, the EDNS server 160 in Skene et al. only determines which server array controller SAC 101, 102 and 103 to select. Then, the SAC 101, 102 or 103 decides which virtual server 1 ... N is selected (see also paragraph [0028] – [0035], for example).

Thus, moving the operations of the EDNS server 160 to the client 150 based on the teachings of Brendel still only results in the client 150 selecting a particular SAC rather than the EDNS server 160. That is, Brendel teaches sending out many connection packets to different servers and then connecting to the server that first responds. This is often referred to as “Spray and Pray.” Thus, combining Brendel with Skene et al would result in the client 150 sending out packets to each SAC and then selecting the SAC that first response. The selected SAC would then determine what server 110 to select. The selection of SACs 101 in Skene et al. can not be

ignored because this is a main point of Skene et al. The additional secondary references also do not teach or suggest these features.

Accordingly, it is respectfully submitted independent claims 1, 24, 37, 41 and 44 and the claims depending therefrom are allowable.

In addition, dependent claim 5 has been amended to clarify that the one or more parameters comprise a monetary cost. Dependent claims 34, and 38-40 include similar amendments.

Regarding dependent claim 5, the Office Action relies on Skene et al. as teaching the feature of a parameter comprising a cost (... round trip time ...). However, it is respectfully submitted the monetary cost differs from the round trip time. For example, some web sites may charge a higher fee for accessing their website that is not based on the round trip time.

Accordingly, it is respectfully submitted these dependent claims further define over the applied art.

In the event there are any matters remaining in this application, the Examiner is invited to contact David Bilodeau at (703) 205-8072, at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-1602 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

By 

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